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Appln. No. 10/085,113
Amdt. dated Aug. 14, 2006
Rcply to Final Action of 04/13/2006

REMARKS

The claims have been amended to refer to "target state information" rather than a "target identifier", which finds support for example at paragraph [0014] of the description. Independent claims 1 and 4 have been amended to more clearly recite that the digital file to be installed is used in operating the embedded system. The amendments have been made to place the claims in better form for consideration upon appeal. No new subject matter has been added. Claims 1 to 15 remain in the application.

Reconsideration of Finality of Office Action

The Applicant respectfully requests that the finality of this Office Action be withdrawn. The Examiner does not appear to have fully considered or addressed the arguments presented by the Applicant on January 24, 2006, and the Applicant does not believe that a full and fair hearing has been offered.

In paragraph 7 of the present Office Action, the Examiner states that "it is noted that the features upon which applicant relies, such as the target identifier corresponding to the embedded system, are not recited in the rejected claims." However, independent claims 1 and 4, as they read at the time of the Office Action, each included as the first step of the method "combining the digital file with a header including a target identifier corresponding to the embedded system". The Applicant therefore respectfully submits that the Examiner has failed to fully consider the Applicant's arguments.

The Examiner has not addressed the Applicant's arguments that Sasaki does not teach the installing of a digital file following verification of a target identifier, and has in fact cited the same portions of Sasaki (Figure 6, Figure 7, Figure 8b, and their corresponding descriptions) as showing this feature, despite the Applicant having argued extensively that these portions do not show this feature. The Applicant therefore respectfully submits that the Examiner has failed to fully consider the Applicant's arguments.

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Arguments in response to present Office Action

The Examiner has rejected claims 1 to 3, 7, 11, 12, and 15 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2002/0077988 by Sasaki *et al.*

The method recited in amended claim 1 of the present application includes combining the digital file with a header including target state information specifying a certain embedded system. This is an element not taught or suggested by Sasaki. The Examiner has cited Figure 4 blocks 137 and 139, Figure 5b block 162, and paragraphs [0038]-[0040] and [0042] as teaching combining the digital file with header information including a target identifier corresponding to the embedded system. However, these do not disclose use of target state information specifying a certain embedded system. Sasaki teaches use of a user ID corresponding to a licensed user. Paragraph [0042] makes it clear that the user ID is of a purchaser of music, and does not correspond to a device: "The user's identifier 137 also is embedded in the user's portable media device or the user's playback software application program".

The method recited in amended claim 1 also includes installing the digital file on the embedded system. This is a feature not taught by Sasaki. Sasaki teaches loading of music files into a system. This is different from installation of a file. The Examiner has cited the Microsoft Computer Dictionary 5th Edition as defining "to install" as setting in place and preparing for operation. The Applicant does not dispute this definition, and is not attempting to redefine the term "to install" contrary to its ordinary meaning. On the contrary, the Applicant submits that this definition of "to install" is distinct from the operations carried out in the teachings of Sasaki, and is one reason why the present claims were amended on January 24, 2006. The definition of "install" provided by the Microsoft Computer Dictionary 5th Edition reads in full:

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To set in place and prepare for operation. Operating systems and application programs commonly include a disk-based installation, or setup, program that does most of the work of preparing the program to work with the computer, printer, or other devices. Often such a program can check for devices attached to the system, request the user to choose from sets of options, create a place for the program on the hard disk, and modify the system startup files as necessary.

The Applicant submits that this definition clearly describes more than mere loading of music data into an MP3 player or other system. The Examiner has cited Webopaedia (<http://www.pcwebopaedia.com/TERM/l/load.html>) in order to equate "load" with "install". First, the Applicant respectfully submits that a proper comparison of the terms "load" and "install" should use the same source for their definitions. Second, this meaning of "to load" from Webopaedia reads in full "To install. For example, to load a disk means to mount it in a disk drive", which is clearly directed to hardware and not to installing of files. Third, the exact meaning of "to load" is not particularly relevant as Sasaki is clearly not describing installation of a digital file in the common meaning of "install" as evidenced for example by the Microsoft Computer Dictionary 5th Edition.

The method recited in amended claim 1 also includes installing the digital file on the embedded system only if the target state information in the header corresponds to target state information of the embedded system. This is an element not taught or suggested by Sasaki. The Examiner has cited Figure 6 and paragraph [0044], Figure 7 and paragraph [0045], and Figure 8b and paragraph [0047], as showing the feature of verifying the target identifier before the embedded system is enabled to install the digital file on the embedded system.

With reference to Figure 6 and paragraph [0044], Sasaki teaches that a user identifier stored in memory of the device is compared with a user identifier embedded in a content header, and if the user identifiers match then the digital content is rendered. Sasaki is teaching a way to restrict playback of content, but not to restrict installation of the digital file on the device. The digital content is loaded onto the device regardless, and only playback of the content is restricted.

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With reference to Figure 7 and paragraph [0045], Sasaki teaches that a user identifier stored in memory is compared with a user identifier embedded in a content header, and if the user identifiers match then the device is authorized to transmit the digital content. Sasaki is teaching a way to authorize transmission of content from a device based on the identification of the transmitting device, but not to restrict installation of the digital file on the device. The digital content is already loaded on to the device.

With reference to Figure 8 and paragraph [0047], Sasaki teaches that an identifier of the digital content is compared with identifiers of licensed digital content stored in memory in order to enable rendering of the digital content. Sasaki explicitly states that "the resulting transfer file is transmitted to the portable media player", before a comparison of content identifiers. With reference to this embodiment, Sasaki makes no mention of the user device identifier. Sasaki is teaching a way to authorize playback of digital content already stored on a device, such authorization being based on content identifiers and not on user device identifiers.

Similarly, the system recited in amended claim 7 includes means to combine files to be uploaded with target state information specifying the embedded system, and means to install the digital file on the embedded system only if the target state information corresponds to target state information of the embedded system. As discussed above, Sasaki does not teach or suggest these features.

Claims 2, 3, 11, 12, and 15 are variously dependent on claims 1 and 7, and include the same limitations discussed above. Since Sasaki does not teach every element of the claims, the Applicant respectfully submits that claims 1 to 3, 7, 11, 12, and 15 are not anticipated by Sasaki.

The Examiner has rejected claims 4 to 6 under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of U.S. Patent 6,401,206 to Khan *et al.*

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The method recited in amended claim 4 includes combining the digital file with a header including target state information specifying a certain embedded system. This is an element not taught or suggested by either Sasaki. The Examiner has cited Figure 4 blocks 137 and 139, Figure 5b block 162, and paragraphs [0038]-[0040] and [0042] of Sasaki as teaching combining the digital file with header information including a target identifier corresponding to the embedded system. However, these do not disclose use of target state information specifying a certain embedded system. Sasaki teaches use of a user ID corresponding to a licensed user. Paragraph [0042] makes it clear that the user ID is of a purchaser of music, and does not correspond to a device: "The user's identifier 137 also is embedded in the user's portable media device or the user's playback software application program". In addition, the Examiner has not shown where this feature is taught or suggested by Khan.

The method recited in amended claim 4 also includes installing the digital file on the embedded system. As discussed above with respect to amended claim 1, this is a feature not taught by Sasaki. In addition, the Examiner has not shown where this feature is taught or suggested by Khan.

The method recited in amended claim 4 also includes installing the digital file on the embedded system only if the target state information in the header corresponds to target state information of the embedded system. This is an element not taught or suggested by Sasaki. The Examiner has cited Figure 6 and paragraph [0044], Figure 7 and paragraph [0045], and Figure 8b and paragraph [0047] of Sasaki, as showing the feature of verifying the target identifier before the embedded system is enabled to install the digital file on the embedded system. However, as discussed above with respect to claim 1, these passages of Sasaki do not teach this feature. In addition, the Examiner has not shown where this feature is taught or suggested by Khan.

The Examiner has not shown where each and every element of claim 4 is taught or suggested by Sasaki or Khan. Claims 5 and 6 are dependent on claim 4, and include

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the same limitations discussed above. The Applicant therefore respectfully submits that a *prima facie* case of obviousness has not been established against claims 4 to 6.

The Examiner has rejected claims 8 to 10 and 13 under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Khan. Claims 8 to 10 and 13 are dependent on claim 7 and include the same limitations discussed above, which the Applicant has argued are not taught by Sasaki. The Examiner has also not shown where these features are taught or suggested by Khan. Because the Examiner has not shown where each element of claims 8 to 10 and 13 (in particular means to combine files to be uploaded with the target state information specifying the embedded system and means to install the digital file on the embedded system only if the target state information corresponds to target state information of the embedded system) is taught by Sasaki and Khan, the Applicant respectfully submits that a *prima facie* case of obviousness has not been established against claims 8 to 10 and 13.

The Examiner has rejected claim 14 under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of U.S. Patent 6,169,976 issued to Colosso. Claim 14 is dependent on claim 7 and includes the same limitations discussed above, which the Applicant has argued are not taught by Sasaki. The Examiner has also not shown where these features are taught or suggested by Colosso. Because the Examiner has not shown where each element of claim 14 (in particular means to combine files to be uploaded with the target state information specifying the embedded system and means to install the digital file on the embedded system only if the target state information corresponds to target state information of the embedded system) is taught by Sasaki and Colosso, the Applicant respectfully submits that a *prima facie* case of obviousness has not been established against claim 14.

In view of the foregoing, it is believed that the claims at present on file and as amended herein are in condition for allowance. Reconsideration and action to this end is respectfully requested. Reconsideration of the finality of this office action is also respectfully requested.

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